The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE
(SEC-2011-08)

RE: Repeal of Chapter 590-4-8 entitled "Investment Advisors" Consisting of Rules 590-4-8-.01 to 590-4-8-.25

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter "Commissioner") proposes to repeal chapter 590-4-8 *Investment Advisors*, consisting of Rules 590-4-8-01, 590-4-8-.02, 590-4-8-.03, 590-4-8-.04, 590-4-8-.05, 590-4-8-.06, 590-4-8-.07, 590-4-8-.08, 590-4-8-.09, 590-4-8-.10, 590-4-8-.11, 590-4-8-.12, 590-4-8-.13, 590-4-8-.14, 590-4-8-.15, 590-4-8-.16, 590-4-8-.17, 590-4-8-.18, 590-4-8-.19, 590-4-8-.20, 590-4-8-.21, 590-4-8-.22, 590-4-8-.23, 590-4-8-.24, and 590-4-8-.25.

Attached with this notice is an exact copy of each proposed rule to be repealed. The rules are being repealed under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the repeal of said rules is necessary and in the public interest because the rules were promulgated under the Georgia Securities Act of 1973, which the General Assembly repealed in its entirety and replaced pursuant to Act 528 during the 2008 legislative session.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the repeal of the proposed rules at 12:45 p.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice and exact copy of each proposed rule for repeal are available for review on the Securities Divisions' web page at http://www.sos.ga.gov/securities. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed repeal of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference "SEC-2011-08" on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This _13th_ day of October, 2011.

Vincent R. Russo
Interim Assistant Commissioner of Securities

590-4-8-.01 Electronic Filing with Designated Entity.

(1) Designation. Pursuant to Code Section 10-5-10, the Commissioner designates the Investment Adviser Registration Depository (hereinafter "IARD"), operated by the NASD, as well as the CRD, to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Commissioner.

(2) Use of IARD and CRD by Investment Advisers and Investment Adviser Representatives. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the Commissioner shall be filed electronically with IARD and/or CRD.

(a) Electronic Signature. When a signature is required for any filing to be made through IARD and/or CRD, the applicant, or a duly authorized officer, shall affix his, her, or its electronic signature to the filing by typing his, her, or its name in the appropriate field(s) and submitting the filing to IARD and/or CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by those individuals whose names appear on the filing.

(b) When Filed. A filing made through IARD and/or CRD is considered filed with the Commissioner when all required fees and submissions are received and the filing is accepted by IARD and/or CRD. Filings required to be made through the IARD and/or CRD on a day that the IARD and/or CRD is closed shall be considered timely filed with the Commissioner if filed with the IARD and/or CRD no later than the following business day.

(c) Notwithstanding subparagraph (b) of this Rule, electronic filing of any particular document and the electronic collection of related processing fees shall not be required until IARD and/or CRD provides for receipt of such filings and fees and thirty (30) days' notice is provided by the Commissioner. Any required documents or fees that are not permitted to be filed with, or that cannot be accepted by IARD and/or CRD, shall be filed directly with the Commissioner.

(d) Filing Fees. You must pay NASD a filing fee. No portion of the filing fee is refundable. Filings will not be accepted by NASD, and thus will not be considered filed with the Commissioner, until you have paid the filing fee.

(3) Every document filed with IARD, as well as with CRD, shall be deemed a "document filed with the Commissioner" for purposes of Code Section 10-5-12.

(4) Filings required to be made through the IARD and/or CRD during the period in December of each year that the IARD and/or CRD is not available for submission of filings shall be considered timely filed with the Commissioner if filed with the IARD and/or CRD no later than the following January 7.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10.

590-4-8-.02 Investment Adviser Registration.

(1) Initial Application. To apply for registration with the Commissioner as an investment adviser, one must complete Form ADV (the Uniform Application for Investment Adviser Registration promulgated by the SEC) and file it electronically with IARD. The application shall also include:

(a) Proof of compliance with the examination requirements of Rule 590-4-8-.08;

(b) Any financial statements required by Code Section 10-5-3(e)(8) or Rule 590-4-8-.15. The financial statements shall include a balance sheet for the most recent fiscal year prepared in accordance with generally accepted accounting principles. Investment advisers that have custody of client funds or securities, or that require prepayment of more than five hundred dollars ($500.00) in fees per client six (6) or more months in advance, shall file audited balance sheets meeting the requirements of Rule 590-4-8-.15;

(c) The fees required by Code Section 10-5-3 and Rule 590-4-8-.04; and

(d) Any other documents or information required by statute or requested by the Commissioner.

(2) Except as otherwise provided, Part 2 of Form ADV shall be filed manually by every investment adviser applicant until IARD is able to process Part 2 of Form ADV, at which time investment adviser applicants shall file Part 2 of Form ADV through IARD.

(3) Annual Renewal. An application for renewal registration as an investment adviser shall be filed consistent with instructions from the NASD, as operators of IARD, no later than December 31st of each year, shall contain the fee required by Code Section 10-5-3(j) and Rule 590-4-8-.04, and shall contain such amendments to the initial registration as may be required by the applicable provisions of the Act or Rule.

(4) Amendments. Any amendments required or permitted by Code Section 10-5-3 for an investment adviser shall be made on Form ADV. An investment adviser shall promptly file an amendment on Form ADV correcting:

(a) Any information contained in response to Items one (1) through five (5) or eight (8) through eleven (11) of Part 1A of Form ADV, or any information contained in response to Items one (1) or two (2) of Part 1B of Form ADV, that has become inaccurate for any reason; and

(b) Any information contained in response to any Items of Part 2 (except those Items pertaining to the balance sheet) of Form ADV that has become inaccurate in a material manner. An amendment is filed promptly if the amendment is filed within thirty (30) business days of the event requiring the filing of the amendment. Any inaccurate information on Form ADV not designated in subparagraphs (4)(a) or (4)(b) above shall be corrected by filing an amendment along with the investment adviser's application for renewal registration on or before December 31st in the calendar year in which the changes occur.

(5) The following shall be deemed initial applications for registration even though designated as amendments:

(a) A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship, or other entity that is not registered when the form is filed and that succeeds to, and continues the business of, a predecessor entity registered as an investment adviser if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change;

(b) A Form ADV filed by an investment adviser partnership that is not registered when such form is filed and that succeeds to, and continues the business of, a predecessor partnership registered as an investment adviser if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners; or

~~(c) A Form ADV filed by an investment adviser corporation that is not registered when the form is filed and that succeeds to, and continues the business of, a predecessor corporation registered as an investment adviser if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.~~
~~(6) Except as otherwise required by law or rule, the filing of an application with IARD and/or CRD does not constitute the applicant's registration in Georgia until the applicant is notified by IARD and/or CRD that the applicant's registration is effective in Georgia. The Commissioner is authorized to participate as an automatic approval state in IARD and/or CRD and to waive any filing requirement that is inconsistent with registration through IARD and/or CRD.~~
~~Authority O.C.G.A. Secs.10-5-3, 10-5-10, 10-5-23.1.~~

590-4-8-.03 Investment Adviser Representative Registration.

(1) Initial Application. The application for initial registration as an investment adviser representative pursuant to Code Section 10-5-3 shall be filed by completing Form U-4 (the Uniform Application for Securities Industry Registration or Transfer) and filing it with CRD. The application for initial registration shall be accompanied by:

(a) Proof of compliance by the investment adviser representative with the examination requirements of Rule 590-4-8-.08;

(b) The fees required by Code Section 10-5-3 and Rule 590-4-8-.04; and

(c) Any other documents or information required by statute or requested by the Commissioner.

(2) Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed consistent with instructions from the NASD with CRD no later than December 31st of each year. The application for annual renewal shall include the fee required by Code Section 10-5-3 and Rule 590-4-8-.04 and shall contain any amendments required by the Act of Rule.

(3) Updates and Amendments. Investment Adviser Representatives are under a continuing obligation to update information required by Form U-4 as changes occur. Investment Adviser Representatives and investment advisers shall promptly file with CRD any amendments to a representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) business days of the event requiring the filing of the amendment.

Authority O.C.G.A. Secs.10-5-3, 10-5-10, 10-5-23.1.

~~590-4-8-.04 Fees for Registration and Applicants.~~

~~(1) Investment advisers filing an initial application for registration shall pay a fee of two hundred fifty dollars ($250.00) to the Commissioner, through IARD, no part of which shall be refunded.~~

~~(2) Investment advisers filing an application for renewal registration shall pay a fee of one hundred dollars ($100.00) to the Commissioner, through IARD, no part of which shall be refunded.~~

~~(3) All persons filing an initial application for registration as an investment adviser representative shall pay a fee of fifty dollars ($50.00) to the Commissioner, through IARD, no part of which shall be refunded.~~

~~(4) All investment adviser representatives filing an application for renewal registration shall pay a fee of forty dollars ($40.00) to the Commissioner, through IARD, no part of which shall be refunded.~~

~~(5) In addition to the above fees, each applicant shall pay any and all processing costs or charges imposed by IARD and/or CRD incident to the registration or renewal.~~

~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10.~~

590-4-8-.05 Termination or Withdrawal of Registration.

(1) Any investment adviser that does not wish to renew its registration pursuant to Code Section 10-5-3(i) shall file a Form ADV-W (Notice of Withdrawal of Registration as an Investment Adviser promulgated by the SEC) with IARD, on or before December 31st of the year in which its then-current registration expires.
(2) Any investment adviser that is no longer in existence, or that is not engaged in business as an investment adviser, shall, upon cessation, file a Form ADV-W with IARD.
(3) Any investment adviser representative not wishing to renew his or her registration pursuant to Code Section 10-5-3(i) shall file a Form U-5(Uniform Termination Notice for Securities Industry Registration) with CRD, on or before December 31st of the year in which his or her then-current registration expires.
(4) Any investment adviser representative wishing to terminate his or her current registration shall file a Form U-5 with IARD.
(5) Effective Date. Every notice of withdrawal filed pursuant to this Rule shall become effective sixty (60) days after the filing with IARD, or within such shorter period of time as the Commissioner may determine. If, prior to the effective date of any notice of withdrawal, the Commissioner has instituted a proceeding to suspend or revoke registration or to impose terms or conditions upon withdrawal pursuant to Code Section 10-5-4, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commissioner deems necessary or appropriate considering the public interest or the protection of investors.
Authority O.C.G.A. Secs. 10-5-3, 10-5-4, 10-5-10.

~~590-4-8-.06 Incomplete and Abandoned Applications.~~

~~(1) Any application for registration as an investment adviser or investment adviser representative is deficient if any of the following conditions exist:~~

~~(a) The application is not in proper form; or~~

~~(b) The application is not in compliance with Code Section 10-5-3 or any other provision of the Act or the Rules.~~

~~(2) When an application is found to be deficient, the Commissioner may send a letter explaining the deficiency to the applicant and, if the applicant is an investment adviser representative, to the investment adviser who employs or proposes to employ the applicant. The application shall be deemed to be abandoned by the applicant if the Commissioner receives no communication from the applicant for a period of sixty (60) days after the applicant receives the deficiency letter, the Commissioner may issue a notice, pursuant to Code Section 10-5-16, stating that the Commissioner may issue an order dismissing the application without prejudice.~~

~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10.~~

590-4-8-.07 Exemptions of Investment Advisers Registered as Dealers in Connection with the Provision of Certain Investment Advisory Services.

(1) A securities dealer, registered pursuant to Code Section 10-5-3, shall be exempt from registering as an investment adviser if such dealer is acting as an investment adviser solely:

(a) by means of publicly distributed written materials or publicly made oral statements;

(b) by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(c) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(d) through any combination of the foregoing services; provided, however, that the materials and oral statements include a statement that, if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security that is a subject of the communication, the adviser may act as principal for its own account or as agent for another person.

(2) For purposes of this Rule, publicly distributed written materials are those that are distributed to thirty-five (35) or more persons paying for such materials, and publicly made oral statements are those made simultaneously to thirty-five (35) or more persons paying for access to the statements. The requirement that the investment adviser disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the investment adviser of any disclosure obligation that, depending upon the nature of the relationship between the investment adviser and the client, may be imposed by Code Section 10-5-3(o), Rule 590-4-8-.11, or any other provisions of the Act or the Rules.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10.

590-4-8-.08 Examinations.

(1) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative shall provide proof to the Commissioner that the individual has passed, either:

(a) The Series 65 Examination (The Uniform Investment Adviser Law Examination), as released on January 1, 2000, or later;

(b) The Series 65 Examination (The Uniform Investment Adviser Law Examination), as released prior to January 1, 2000, plus either the Series 7 Examination (The General Securities Representative Examination) or the Series 2 Examination (The Nonmember Examination);

(c) The Series 65 Examination (The Uniform Investment Adviser Law Examination), as released prior to January 1, 2000, plus the Series 6 Examination (The Investment Company Products/Variable Contracts Representative Examination) and the Series 22 Examination (The Direct Participation Programs Representative Examination); or

(d) The Series 7 Examination (The General Securities Representative Examination), plus the Series 66 Examination (The Uniform Combined State Law Examination), as released January 1, 2000, or later.

(2) Reexamination upon Lapse of Registration. Any individual who has not been registered in any jurisdiction for a period of two (2) years may be required to comply with the examination requirements of this Rule. But, the Commissioner may, within his or her sole discretion, find the applicant qualified by other examinations, or significant and comprehensive experience or expertise in the securities or investment adviser business.

(3) The examination requirements shall be considered satisfied by an individual applicant or registrant who currently holds and maintains one of the following professional designations:

(a) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) awarded by the CFA Institute;

(e) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(f) Such other professional designation as the Commissioner may by rule or order recognize.

(4) Any investment adviser or investment adviser representative who wishes to rely on passing any examination other than those enumerated in paragraph (1) of this Rule, or who wishes to request a waiver of the examination requirements of this Rule, must submit a written request for consideration, identifying the examination in question, its content, the agency administering the examination, the substantial hardship to the applicant should the applicant be required to pass the examination, and the reason why a waiver should be granted by the Commissioner. An investment adviser or investment adviser representative who wishes to request a one-time extension in which to show proof of compliance with paragraph (1) of this Rule shall also submit a written request for consideration, identifying the extenuating circumstances that necessitate the extension. Acceptance or rejection of any applicant's request is solely within the discretion of the Commissioner.

(5) An investment adviser who is not an individual shall meet the examination requirements imposed by this Rule by showing proof, on a continuing basis, that any one of its investment

~~adviser representatives who is currently engaged in the management of the investment adviser's business in this State (including the supervision of such business or the training of investment advisor representatives or employees) is in compliance with the provisions of this Rule.~~
~~(6) Any individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 8, 2003, shall not be required to satisfy the examination requirements for registration pursuant to this Rule except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities statute, rules, or regulations.~~
~~Authority O.C.G.A. Secs. 10-5-2, 10-5-3, 10-5-10.~~

590-4-8-.09 Books and Records to Be Maintained by Investment Advisers.

(1) Every investment adviser registered, as defined under the Act, shall make and keep true, accurate, and current the following books, ledgers, and records relating to its investment advisory business:

(a) Those books and records required to be maintained and preserved in compliance with Rule 204-2 of the Investment Advisers Act of 1940 notwithstanding the fact that the investment adviser is not registered nor required to be registered under the Investment Advisers Act of 1940.

(b) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser.

(c) A list, or other record, of all accounts with respect to the funds, securities, or transactions of any client.

(d) A copy, in writing, of each agreement entered into by the investment adviser with any client.

(e) A file containing a copy of each record required by Rule 204-2(a)(11) of the Investment Advisers Act of 1940 including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to ten (10) or more persons (other than persons connected with the investment adviser).

(f) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 590-4-8-.11, and a record of the dates that each written statement and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(g) For each client that was obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered nor required to be registered under the Investment Advisers Act of 1940.

(h) All records required by Rule 204-2(a)(16) of the Investment Advisers Act of 1940 including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser).

(i) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, or regarding any written customer or client complaint.

(j) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(k) Written procedures for supervising the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(l) A file containing a copy of each document (other than any notices of general dissemination) that was filed with, or received from, any state or federal agency or self-regulatory organization that pertains to the registrant or its investment adviser representatives. The file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(m) For investment advisers that have custody, as that term is defined in Rule 590-4-8-.16, of client funds or securities, all records and evidence of compliance required by Rule 206(4)-2 of the Investment Advisers Act of 1940.

(2) Every investment adviser subject to paragraph (1) of this Rule shall preserve the following records in the manner prescribed:
(a) Except as provided by subparagraphs (2)(b) and 2(c) of this Rule, all books and records required to be made under the provisions of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record, of which the first two (2) years shall be in the principal office of the investment adviser.
(b) Except as provided in subparagraph (2)(c)(ii), books and records required to be made under the provisions of subparagraphs (1)(e) and (1)(h) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the investment adviser last published, or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.
(c) Notwithstanding other record preservation requirements of this Rule, the following records or copies are required to be maintained at the business location of the investment adviser from which the customer or client is being provided, or has been provided, investment advisory services:
1. Records required to be preserved under:
(i) Paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940; and
(ii) Subparagraphs (1)(i)-(k) of this Rule.
2. The records or copies required under the provisions of subparagraphs (1)(e), (1)(h), and (1)(l) of this Rule that identify the name of the investment adviser representative providing investment advice from that business location, or that identify the business location's physical address, mailing address, electronic mailing address, or telephone number. These records shall be maintained for the period described in subparagraph (2)(b) of this Rule.
(d) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser, and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three (3) years after termination of the enterprise.
(e) An investment adviser subject to paragraph (1) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for, and be responsible for, the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.
(3) To the extent that the SEC promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules, as amended, shall not be subject to enforcement action by the Commissioner for violating this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.
(4) Every investment adviser that maintains its principal place of business in a state other than Georgia shall be exempt from the requirements of this Rule, provided that the investment adviser is licensed in such other state and is in compliance with that state's record keeping requirements. Authority O.C.G.A. Secs. 10-5-2, 10-5-3, 10-5-10.

590-4-8-.10 Supervision of Investment Adviser Representatives and Employees.

(1) Every investment adviser, as defined under the Act, shall exercise diligent supervision over the investment advisory activities of its investment adviser representatives and employees.

(2) Each investment adviser representative and other office employees shall be subject to supervision by the investment adviser. The investment adviser shall be responsible for administering its policies and procedures.

(3) Written policies and procedures, a copy of which shall be kept in each business office, shall be established, maintained, and enforced and shall set forth the standards and procedures adopted to comply with the requirements imposed by the Act and the Rules.

(4) The investment adviser shall be responsible for inspecting each office location at least annually to ensure that its written policies and procedures are enforced.

(5) It shall be the responsibility of each investment adviser to make certain that investment adviser representatives have been properly registered prior to rendering investment advice and that proof of the investment adviser representative's registration is immediately accessible prior to his or her rendering such advice.

(6) It shall be the responsibility of each investment adviser, and its supervisory personnel, to ensure that all employees of the investment adviser are properly trained regarding the disclosure requirements and the civil and criminal liability provisions of the Act.

(7) For the purposes of this rule, no person shall be deemed to have failed reasonably to supervise any other person if:

(a) There have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other persons, and

(b) Such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures were not being complied with.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10.

590-4-8-.11 Written Disclosure Statements.

(1) Unless otherwise provided, an investment adviser, as defined under the Act, shall, in accordance with the provisions of this Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part 2 of its Form ADV, as long as it complies with Code Sections 10-5-3(e) and 10-5-3(m), or a written document containing at least the information required by Part 2 of Form ADV.

(2) An investment adviser, except as provided in subparagraphs (2)(b) or (2)(c) of this Rule, shall deliver the statement required by this Rule to an advisory client or prospective advisory client:

(a) not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(b) Delivery of the statement required by subparagraph (2)(a) of this Rule need not be made in connection with entering into:

1. an investment company contract, or

2. a contract for impersonal advisory services.

(c) Notwithstanding the provisions of subparagraph (2)(a), an investment adviser shall not be required to grant an advisory client or prospective advisory client five (5) days to terminate a contract for the purchase or sale of securities, provided that:

1. the investment adviser is also registered as a securities dealer pursuant to Code Section 10-5-3;

2. the contract relates to the purchase or sale of a security;

3. advisory services are only provided incidentally to the investment adviser's business as a securities dealer and no special compensation is received for the advisory services; and

4. disclosure is provided to the client or prospective client at or before the time the client makes a purchase or sale of a security.

(3) Offer to deliver.

(a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, shall, annually, and without charge, deliver, or offer in writing to deliver upon written request, the statement required by this Rule to each of its advisory clients.

(b) The delivery or offer required by subparagraph (3)(a) of this Rule need not be made to advisory clients receiving advisory services solely pursuant to:

1. an investment company contract, or

2. a contract for impersonal advisory services requiring a payment of less than two hundred dollars ($200.00).

(c) With respect to an advisory client entering into a contract, or receiving advisory services pursuant to a contract for impersonal advisory services, that requires a payment of two hundred dollars ($200.00) or more, an offer of the type specified in subparagraph (3)(a) of this Rule shall also be made at the time of entering into an advisory contract.

(d) Any statement requested in writing by an advisory client pursuant to an offer required by this Rule must be mailed or delivered within seven (7) days of the receipt of the request.

(4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5) Other disclosures. Nothing in this Rule shall relieve any investment adviser of any obligation pursuant to any provision of the Act, the Rules, or any other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

(6) Sponsors of Wrap Fee Programs.

(a) Except as provided by subparagraph (6)(b) of this Rule, an investment adviser, registered or required to be registered pursuant to Code Section 10-5-3, that is a sponsor of a wrap fee program, shall, in lieu of the written disclosure statement required by paragraph (1) of this Rule, and in accordance with the other provisions of this Rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in the disclosure statement should be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(b) An investment adviser need not furnish the written disclosure statement required by subparagraph (6)(a) of this Rule to clients and prospective clients of a wrap fee program if another sponsor of the wrap fee program provides the written disclosure statement to all such clients and prospective clients.

(c) If an investment adviser is required under this paragraph (6) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H of Form ADV that is not applicable to clients or prospective clients of that wrap fee program or programs.

(d) An investment adviser that is required under this paragraph (6) to furnish a disclosure statement to clients of a wrap fee program shall furnish the disclosure statement to each client of the wrap fee program (including clients that have previously been furnished the disclosure statement required under paragraph (1) of this Rule) no later than the effective date of this Rule.

(7) Definitions. For purposes of this Rule:

(a) “Contract for impersonal advisory services” means any contract relating solely to the provision of investment advisory services:

1. by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

2. through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

3. by any combination of the services described in subparagraphs (7)(A)(i) and (ii) of this Rule.

(b) “Entering into,” in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract that is in effect immediately prior to such extension or renewal.

(c) “Investment company contract” means a contract with an investment company registered under the Investment Company Act of 1940 that meets the requirements of section 15(c) of that Act.

(d) “Sponsor” means an investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(e) “Wrap fee program” means a program under which a client is charged a specified fee or fees not based directly on transactions in a client’s account for investment advisory services (which

~~may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.~~
~~Authority O.C.G.A. Secs. 10-5-2, 10-5-3, 10-5-10.~~

590-4-8-.12 Definition of "Client" of an Investment Adviser.

(1) Preliminary note. This Rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of Code Section 10-5-3(b).

(2) General. For purposes of Code Section 10-5-3(b), the following are deemed to be a single client and a natural person, and:

(a) Any minor child of the natural person;

(b) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(c) All accounts of which the natural person and/or the persons referred to in this subparagraph (2) are the only primary beneficiaries; and

(d) All trusts of which the natural person and/or any persons referred to in this subparagraph (2) are the only primary beneficiaries;

(e) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subparagraph (2) of this Rule), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(f) Two or more legal organizations referred to in subparagraph (2) of this Rule that have identical owners.

(3) Special Rules. For purposes of this Rule:

(a) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this Rule to any other owner;

(b) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of, or plans for, the legal organization's assets or similar matters;

(c) A limited partnership is a client of any general partner or other person acting as an investment adviser to the partnership;

(d) Any person for whom an investment adviser provides investment advisory services without compensation, need not be counted as a client; and

(e) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are United States residents; an investment adviser that has its principal office and place of business in the United States must count all clients.

(4) Holding Out. Any investment adviser relying on this Rule shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of Code Section 10-5-2, solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

Authority O.C.G.A. Secs. 10-5-2, 10-5-3, 10-5-10, 10-5-12.

590-4-8-.13 Performance-Based Compensation Exemption.

(1) General. The provisions of Code Section 10-5-12 will not be deemed to prohibit an investment adviser from entering into, performing, renewing, or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, provided, that the client entering into the contract subject to this Rule is a qualified client, as defined in subparagraph (4)(a) of this Rule.

(2) Identification of the client. In the case of a private investment company, as defined in subparagraph (4)(c) of this Rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of paragraph (1) of this Rule.

(3) Transition rule. An investment adviser that entered into a contract before January 8, 2003 and satisfied the conditions of this Rule as in effect on the date that the contract was entered into will be considered to satisfy the conditions of this Rule; provided however, that this Rule will apply with respect to any natural person or company who is not a party to the contract prior to, and becomes a party to the contract after, January 8, 2003.

(4) Definitions. For purposes of this Rule:

(a) The term "qualified client" means:

1. A natural person who, or a company that, immediately after entering into the contract, has at least seven hundred and fifty thousand dollars ($750,000.00) under the management of the investment adviser;

2. A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract; either:

(i) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than one million five hundred thousand dollars ($1,500,000.00) at the time the contract is entered into; or

(ii) Is a qualified purchaser as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

3. A natural person who, immediately prior to entering into the contract, is:

(i) An executive officer, director, trustee, general partner, or person serving in a substantially similar capacity, of the investment adviser; or

(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for, or on behalf of, the investment adviser, or substantially similar functions or duties for, or on behalf of, another company for at least twelve (12) months.

(b) The term "company" has the same meaning as in Section 202(a)(5) of the Investment Advisers Act of 1940, but does not include a company that is required to be registered under the Investment Company Act of 1940, but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the

~~exception provided from that definition by Section 3(c)(1) of the Investment Company Act of 1940.~~
~~(d) The term "executive officer" has the same meaning as set forth in Code Section 10-5-2.~~
~~(5) Other. Any person entering into, or performing, an investment advisory contract under this Rule is not relieved of any other obligations under Code Section 10-5-12 or any other applicable provision of the Act or the Rules.~~
~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

~~**590-4-8-.14 Certain Transactions Not Deemed Assignments**.~~

~~A transaction that does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of Code Section 10-5-12(j)(2).~~

~~Authority O.C.G.A. Secs. 10-5-3, 10-5-4, 10-5-10.~~

590-4-8-.15 Financial Statements and Reporting Requirements for Investment Advisers.
(1) Every investment adviser, as defined under the Act, who has custody of client funds or securities for the purposes of acting as an investment adviser or who requires payment of advisory fees six (6) months or more in advance, and in excess of five hundred dollars ($500.00) per client, shall file with the Commissioner an audited balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed pursuant to this Rule must be:
(a) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;
(b) Audited by an independent public accountant or an independent certified public accountant; and
(c) Accompanied by an opinion letter of the accountant concerning the report of financial position (i.e., balance sheet) and a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.
(2) Every investment adviser, as defined in the Act, may be required by the Commissioner, pursuant to Code Section 10-5-4(d), to file a financial statement showing the investment adviser's financial condition as of the most recent practicable date. Except as provided in paragraph (1) of this Rule, such financial statements need not be audited.
(3) Financial statements required by this Rule shall be filed with the Commissioner as soon as possible, but no later than one hundred twenty (120) days after the end of the investment adviser's fiscal year.
(4) Financial statements required by this rule may be filed electronically provided the Commissioner has adopted a policy regarding such electronic filing system.
Authority O.C.G.A. Secs. 10-5-3, 10-5-4, 10-5-10, 10-5-12.

590-4-8-.16 Custody of Client Funds or Securities by Investment Advisers.

(1) Safekeeping Required. If you are an investment adviser, as defined under the Act, it is unlawful, and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business, for you to have custody of client funds or securities unless:

(a) Notice to Commissioner. The investment adviser notifies the Commissioner promptly by filing with the Commissioner on Form ADV, through IARD, that the investment adviser has, or may have, custody.

(b) Qualified Custodian. A qualified custodian maintains those funds and securities;

1. In a separate account for each client under that client's name; or

2. In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(c) Notice to Clients. If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(d) Account statements shall be sent to clients, either:

1. By a qualified custodian provided that the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of the investment adviser's clients for which the qualified custodian maintains funds or securities, identifying the amount of funds and each security in the account at the end of the period and setting forth all transactions in the account during that period; or

2. By the investment adviser, provided that:

(i) The account statements are sent at least quarterly to each client for whom the investment adviser has custody of funds or securities, identify the amount of funds and each security of which the investment adviser has custody at the end of the period, and set forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities by actual examination, at least once, during each calendar year at a time chosen by the accountant, without prior notice or announcement to the investment adviser, that is irregular from year to year, and files a certificate on Form ADV-E with the Commissioner within thirty (30) days after the completion of the examination, stating that he, she, or it has examined the funds and securities and describing the nature and extent of the examination; and

(iii) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commissioner within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Commissioner;

3. Special Rule for Limited Partnerships and Limited Liability Companies. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under subparagraph (1)(d) of this Rule shall be sent to each limited partner (or member or other beneficial owner).

(e) Independent Representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subparagraphs (1)(c) and (1)(d) of this Rule.

(2) Exceptions.

(a) Shares of Mutual Funds. With respect to shares of an open-end company as defined in Section (5)(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (1) of this Rule.
(b) Certain Privately Offered Securities.
1. The requirements of paragraph (1) do not apply to securities that are:
(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
(ii) Uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and
(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
2. Notwithstanding subparagraph (2)(b)(i) of this Rule, the provisions of subparagraph (2)(b) of this Rule are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subparagraph (2)(c).
(c) Limited Partnerships Subject to Annual Audit. You are not required to comply with subparagraph (1)(d) of this Rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within one hundred twenty (120) days of the end of its fiscal year.
(d) Registered Investment Companies. You are not required to comply with this Rule with respect to the account of an investment company registered under the Investment Company Act of 1940.
(3) Definitions. For purposes of this Rule:
(a) "Custody" means holding client funds or securities, directly or indirectly, or having any authority to obtain possession of client funds or securities. Custody includes:
1. Possession of client funds or securities (but not of checks drawn by clients and made payable to third parties,) unless received inadvertently and returned to the sender within three (3) business days of receiving them.
2. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and
3. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you, or your supervised person, legal ownership of, or access to, client funds or securities.
(b) "Independent representative" means a person who:
1. Acts as agent for an advisory client (including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);
2. Does not control, is not controlled by, and is not under common control with you; and

~~3. Does not have, and has not had within the past two (2) years, a material business relationship with you.~~
~~(c) "Qualified custodian" means:~~
~~1. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;~~
~~2. A broker-dealer registered under Section 15(b)(1) of the Securities Exchange Act of 1934 holding the client assets in customer accounts;~~
~~3. A futures commission merchant registered under Section 4f(a) of the federal Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and~~
~~4. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.~~
~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

~~590-4-8-.17 Agency Cross Transactions for Advisory Clients.~~

~~(1) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as dealer or limited dealer for both such advisory client and for another person on the other side of the transaction. A person acting in this capacity is required to be registered as a securities dealer or limited dealer in this State, unless excluded from the definition of "dealer" or "limited dealer" in Code Section 10-5-2.~~

~~(2) An investment adviser, as defined under the Act, or a person registered as a dealer or limited dealer under Code Section 10-5-3 that is controlling, controlled by, or under common control with an investment adviser, shall be deemed in compliance with the provisions of Rule 590-4-8-.18 in effecting an agency cross transaction for an advisory client if the following conditions are met:~~

~~(a) The advisory client executes a written consent prospectively authorizing the investment adviser or any other person relying on this Rule to effect agency cross transactions for the advisory client;~~

~~(b) Before obtaining written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser or such other person will act as dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities;~~

~~(c) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:~~

~~1. a statement of the nature of the transaction;~~

~~2. the date the transaction took place;~~

~~3. an offer to furnish, upon request, the time when the transaction took place; and~~

~~4. the source and amount of any other remuneration the investment adviser and any other person relying on this Rule received or will receive in connection with the transaction. In the case of a purchase in which the investment adviser or any other person relying on this Rule was not participating in a distribution, or a sale in which the investment adviser or any other person relying on this Rule was not participating in a tender offer, the written confirmation may state whether the investment adviser or any other person relying on this Rule has received or will receive any other remuneration and that the investment adviser or any other person relying on this Rule will furnish the source and amount of such remuneration to the client upon the client's written request;~~

~~(d) At least annually, and with or as part of any written statement or summary of the account from the investment adviser or any other person relying on this Rule, the investment adviser or any other person relying on this Rule sends the client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement or summary, and the total amount of all commissions or other remuneration that the investment adviser or any other person relying on this Rule received or will receive in connection with agency cross transactions during the period;~~

~~(e) Each written disclosure and confirmation required by this Rule includes a conspicuous statement that the client may revoke the written consent required under subparagraph (2)(a) at~~

~~any time by providing written notice to the investment adviser or any other person relying on this Rule; and~~

~~(f) No agency cross transaction may be effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.~~

~~(3) Nothing in this Rule shall be construed to relieve an investment adviser, any other person relying on this Rule, or investment adviser representative of an obligation to act in the best interests of the advisory client (including fulfilling the duty with respect to the best price and execution for the particular transaction for the client), nor shall this Rule relieve any investment adviser, any other person relying on this Rule, or investment adviser representative of any other disclosure obligations which may be imposed by the Act or any applicable rules.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

590-4-8-.18 Dishonest or Unethical Practices.

(1) Investment advisers, federal covered advisers, and investment adviser representatives are fiduciaries and have a duty to act primarily for the benefit of their clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, federal covered adviser, or investment adviser representative and his or her clients and the circumstances of each case, an investment adviser, federal covered adviser, or investment adviser representative shall not engage in dishonest or unethical practices in the course of his or her business, or otherwise and shall include, but is not limited to, the following:

(a) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of the information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser, federal covered adviser, or investment adviser representative after reasonable examination of the client's financial records.

(b) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(c) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(d) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(e) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.

(f) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, federal covered adviser, investment adviser representative, or any employee of the investment adviser, federal covered adviser, investment adviser representative, misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting a material fact necessary to make any statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

(g) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, federal covered adviser, or investment adviser representative without disclosing that fact. (This prohibition does not apply to a situation where the investment adviser, federal covered adviser, or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser, federal covered adviser, or investment adviser representative orders such a report in the normal course of providing service.)

(h) Charging a client an unreasonable advisory fee considering the type of services to be provided, the experience and expertise of the investment adviser, federal covered adviser, or investment adviser representative, and the sophistication and bargaining power of the client.

(i) Failing to disclose to clients, in writing, before entering into or renewing any advisory agreement, any material conflict of interest relating to the investment adviser, federal covered

adviser, or investment adviser representative or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including, but not limited to:
1. Compensation arrangements connected with advisory services to clients that are in addition to compensation from such clients for such services; and
2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser, federal covered adviser, or investment adviser representative or its employees.
(j) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.
(k) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.
(l) Publishing, circulating or distributing any advertisement that does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.
(m) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser, federal covered adviser, or investment adviser representative has custody or possession of such securities or funds when the investment adviser, federal covered adviser, or investment adviser representative's action is subject to and does not comply with the requirements of Rule 590-4-8-.16 and Rule 206(4)-2 under the Investment Advisers Act of 1940.
(n) Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner that does not comply with Rule 206(4)-3 under the Investment Advisers Act of 1940.
(o) Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under the Investment Advisers Act of 1940.
(p) While acting as principal for the investment adviser, federal covered adviser, or investment adviser representative's own account, knowingly effecting any sale or purchase of any security for the account of a client without disclosing to such client, in writing, before the completion of the transaction, the capacity in which the investment adviser, federal covered adviser, or investment adviser representative is acting and obtaining the client's consent to the transaction.
(q) Employing any investment adviser representative who is not registered as required by the Act, provided that no investment adviser or federal covered adviser that is exempt from registration under the Act shall be required to register its investment adviser representatives.
(r) Borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser or federal covered adviser, or a financial institution engaged in the business of loaning funds.
(s) Loaning money to a client unless the investment adviser, federal covered adviser, or investment adviser representative is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or federal covered adviser.
(t) Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser, federal covered adviser, or investment adviser representative and that no assignment of such contract shall be made by the investment adviser, federal covered adviser, or investment adviser representative without the consent of the other party to the contract.

~~(u) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.~~
~~(v) To indicate in an advisory contract, any conditions, stipulations, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.~~
~~(w) Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative and contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.~~
~~(x) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Adviser Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.~~
~~(y) Any conduct that violates Rule and Regulation of the State of Georgia 590-4-2 (7) or 590-4-4 (13) relating to dishonest or unethical business conduct.~~
~~(2) Engaging in conduct or any act, indirectly or through or by any other person, that would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder. The conduct set forth above is not inclusive. It also includes: employing any device, scheme, or artifice to defraud; engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit; or engaging in other conduct such as nondisclosure, incomplete disclosure, or other deceptive practices.~~
~~(3) The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, federal covered advisers, and investment adviser representatives to the extent permitted by the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996), as amended.~~
~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10, 10-5-12.~~

590-4-8-.19 Transition Schedule for Conversion to IARD.

(1) Electronic Filing of Form ADV.

(a) By April 1, 2003, each investment adviser registered, required to be registered, or required to make a notice filing under the Act must resubmit its Form ADV electronically (if it has not previously done so) with IARD.

(b) If an amendment to Form ADV is made after April 1, 2003, or at an earlier date if an investment adviser has filed its Form ADV (or any amendments to Form ADV) electronically with IARD, the registrant must file amendments to Form ADV electronically with IARD.

(2) Electronic Filing of Form U-4. By May 1, 2003, for each investment adviser representative registered, required to be registered, or required to make a notice filing under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with IARD.

Authority O.C.G.A. Secs.10-5-3, 10-5-10, 10-5-23.1.

590-4-8-.20 Notice of Filing Requirements for Federal Covered Advisers.

(1) Initial Notice Filing. The notice filing for a federal covered adviser pursuant to Code Section 10-5-3(g) shall be filed with IARD on Form ADV (the Uniform Application for Investment Adviser Registration promulgated by the United States Securities and Exchange Commission). A notice filing of a federal covered adviser shall be deemed filed when the required fees and the Form ADV are filed with and accepted by IARD on behalf of the Commissioner.

(2) Portions of Form ADV Not Yet Accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, the Commissioner will deem Part 2 of Form ADV filed if a federal covered adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Commissioner. A federal covered adviser is not required to submit Part 2 of Form ADV to the Commissioner unless requested.

(3) Renewal Notice Filing. The annual renewal of the notice filing for a federal covered adviser pursuant to Code Section 10-5-3(i) shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the required fees are filed with and accepted by IARD on behalf of the Commissioner.

(4) Updates and Amendments. A federal covered adviser shall file with IARD, in accordance with the instructions in Form ADV, any amendments to the federal covered adviser's Form ADV. Any amendment to its federal registration filed by or on behalf of a federal covered adviser with the Securities and Exchange Commission shall also be filed at the same time with the State through IARD.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10.

~~590-4-8-.21 Definitions.~~

~~(1) Form ADV. The Uniform Application for Investment Adviser Registration promulgated by the Securities and Exchange Commission. The Form ADV shall be prepared in accordance with the instructions contained therein.~~
~~(2) ADV-W. The Notice of Withdrawal of Registration as an Investment Adviser promulgated by the United States Securities and Exchange Commission. The Form ADV shall be prepared in accordance with the instructions contained therein.~~
~~(3) Form U-4. The Uniform Application for Securities Industry Registration or Transfer. The Form U-4 shall be prepared in accordance with the instructions contained therein.~~
~~(4) Form U-5. The Uniform Termination Notice for Securities Industry Registration. The Form U-5 shall be prepared in accordance with the instructions contained therein.~~
~~(5) SEC. The United States Securities and Exchange Commission.~~
~~Authority O.C.G.A. Sec. 10-5-10.~~

~~**590-4-8-.22 Investment Advisers Switching to or from SEC Registration.**~~

~~(1) Investment advisers switching to SEC registration. If an investment adviser is registered with the Commissioner and subsequently applies for registration with the SEC, then no later than 10 days after becoming effective with the SEC, the investment adviser shall file its Form ADV-W and notice file as a federal covered adviser pursuant to Code Section 10-5-3(g) with the Commissioner through IARD.~~
~~(2) Federal covered advisers switching to State registration. If a federal covered adviser registered with the SEC loses its eligibility to be registered with the SEC, then no later than 10 days after filing its Form ADV-W through IARD the federal covered adviser must terminate its state notice filing and file its Form ADV with the Commissioner to register as an investment adviser, unless otherwise exempt, pursuant to Code Section 10-5-3(e).~~
~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10.~~

590-4-8-.23 Proxy Voting.

It is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Code Section 10-5-12, for an investment adviser registered or required to be registered under Code Section 10-5-3 to exercise voting authority with respect to client securities, unless the investment adviser:

(1) Adopts and implements written policies and procedures that are reasonably designed to ensure that it votes client securities in the best interest of its clients, which procedures must include how the investment adviser addresses material conflicts that may arise between the investment adviser's interests and those of its clients;

(2) Discloses to clients how its clients may obtain information from the investment adviser about how it voted with respect to the clients' securities; and

(3) Describes to clients its proxy voting policies and procedures and, upon request, furnishes a copy of the policies and procedures to the requesting client.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10.

~~**590-4-8-.24 Investment Adviser Renewal Notices.**~~

~~(1) All procedures, renewal schedules, and fee collection methods announced by the IARD as well as the CRD shall be applicable to registrations processed through IARD and/or CRD for dealers, limited dealers, salesmen, or limited salespersons.~~
~~(2) All renewal notices must be filed with all necessary information and required filing fees no earlier than October 1st and no later than December 31st of each year.~~
~~(3) Filings required to be made through IARD and/or CRD during the period in December of each year that IARD and/or CRD are not available for submission of filings shall be considered timely filed with the Commissioner if filed with IARD and/or CRD no later than the following January 7.~~
~~(4) Salesmen, limited salesmen, dealers, or limited dealers who are registered with and approved by IARD and/or CRD shall submit an annual renewal fee directly to IARD and/or CRD. Any salesperson or dealer bond or evidence of the continuation of a salesperson or dealer bond shall be sent directly to the Commissioner. Renewal of registration shall be effective when notice from IARD and/or CRD has been received by the Commissioner that all fees have been paid and when the required bond has been filed with the Commissioner.~~
~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10.~~

590-4-8-.25 Multiple Registration.

(1) An individual may apply to be registered as an investment adviser representative for more than one investment adviser or federal covered adviser by the filing of a separate U-4 application through CRD by each investment adviser or federal covered adviser and the payment of separate application fees as required through CRD. The Commissioner may deny the multiple registration applications if he or she determines that it is not in the best interests of the public. By having the multiple registration applications submitted on his or her behalf, the investment adviser representative affirmatively represents that he or she will make all disclosures to his or her clients and the effected investment adviser or federal covered adviser regarding potential or actual conflicts of interests.

(2) Each investment adviser or federal covered adviser that employs a multiple registered investment adviser representative shall comply with the requirements of CRD and IARD regarding the multiple registration of investment adviser representatives.

(3) Nothing in this Rule shall relieve the investment adviser or federal covered adviser for whom an investment adviser representative is actually acting of the responsibilities imposed by the Act for the transactions of each investment adviser representative.

Authority O.C.G.A. Secs. 10-5-2, 10-5-3, 10-5-10.